

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:) Attorney Ref.: ZM337/03002
)
Inventor: Michael Lamfuss) Examiner: Maria Alexandra Elve
)
Application No.: 10/813,452) Group Art Unit: 3742
)
Filed: March 30, 2004) Confirmation No.: 4667
)
For: Automatic Leveling Fixture) Date Submitted: July 30, 2010
)

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Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

**APPLICATION FOR PATENT TERM ADJUSTMENT UNDER
37 C.F.R. § 1.705(b) AND 35 U.S.C. § 154**

Dear Sir:

The following remarks are submitted in response to the Determination of Patent Term Adjustment (“PTA”) under 35 U.S.C. § 154(b) (the “Determination”), which was mailed with a Notice of Allowance on April 30, 2010, in the above-referenced patent Application. The Determination stated that the PTA is 90 days. The Applicants, however, contend that the PTA should be 224 days and offer an explanation for this number below. Accordingly, the Applicants seek a Reconsideration of PTA in accordance with 37 C.F.R. § 1.705(b). In addition, no Terminal Disclaimer was filed in the present application. Per 37 C.F.R. § 1.18(e), a payment of \$200.00 is accompanied with this response.

According to *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010), the Patent Office has been incorrectly determining PTA's. The Applicants contend that the Determination was made in error and respectfully request that a new determination be made in accordance with the *Wyeth* decision and as outlined below.

The *Wyeth* court construed 35 U.S.C. § 154(b) to be understood by a simple equation: Delays by the Patent Office missing a variety of deadlines as prescribed by 35 U.S.C. § 154(b)(1)(A) ("A Delays") plus Delays by the Patent Office for not issuing a Patent within three years of the filing date as prescribed by 35 U.S.C. § 154(b)(1)(B) ("B Delays") minus the number of days due to A Delays that also overlap the B Delays ("Overlap") minus the Applicants' Delays equals the PTA. In other words:

$$PTA = A \text{ Delays} + B \text{ Delays} - \text{Overlap} - \text{Applicants' Delay}$$

It should be noted that all delays are measured in terms of days.

The table in Appendix A, submitted herewith, outlines the relevant dates of the various actions by the Office and the Applicants that occurred during the prosecution of the present application, which may have resulted in delays of one form or another. The calculations presented herein and summarized in Appendix A assume that the present application will issue on November 30, 2010. This date is the Tuesday prior to the four-month deadline for issuing a patent after the Applicants have paid the issue fee.

As summarized in the table, the A Delays were due to the Patent Office issuing a First Action 190 days after the application was filed. The second A Delay came 81 days after the Sixth Action was responded to.

The B Delays total 215 days. This number comes from the fact that, if the patent issues on November 30, 2010, the Patent Office will not miss the three-year deadline prescribed by 35 U.S.C. § 154(b)(1)(B).

A delays overlapped B delays by 81 days.

The Applicants delayed a total 181 days.

The total Patent Term Adjustment, which is reflected in the bottom line of the table, is 224 days. Expressed in the *Wyeth* equation: 271 days (A Delay) + 215 days (B Delay) – 81 days (Overlap) – 181 days (Applicants' Delay) = 224 days.

Accordingly, the Applicants respectfully request that the PTA be adjusted to 224 days.

Date: July 30, 2010

Respectfully submitted,
/James E. Cole/
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Appendix A

Activity	Issue/Filing Date	Deadline	A Delay	B Delay	Overlap	Applicants' Delay
Filing Date:	March 30, 2004					
First Action Mailed:	December 6, 2005	May 30, 2005	190			-44
Response to First Action:	January 3, 2006	March 6, 2006				
Second Action Mailed:	March 27, 2006	May 3, 2006				
Response to Second Action:	August 10, 2006	June 27, 2006				
Third Action Mailed:	October 17, 2006	December 10, 2006				
Response to Third Action:	November 7, 2006	January 17, 2007				
Fourth Action Mailed:	February 16, 2007	March 7, 2007				
Response to Fourth Action:	April 2, 2007	May 16, 2007				
Fifth Action Mailed:	June 14, 2007	August 2, 2007				
Response to Fifth Action:	October 31, 2007	September 14, 2007				
Sixth Action Mailed:	January 24, 2008	March 2, 2008	81		-81	-90
Response to Sixth Action:	July 23, 2008	April 24, 2008				
Supp. Resp. to Sixth Action:	September 23, 2008	July 23, 2008				
Seventh Action Mailed:	April 14, 2009	January 23, 2009				
Response to Seventh Action:	June 11, 2009	July 14, 2009				
Eighth Action Mailed:	September 15, 2009	October 11, 2009				
Response to Eighth Action:	November 5, 2009	December 15, 2009				
Ninth Action Mailed:	February 17, 2010	March 5, 2010				
Response to Ninth Action:	April 1, 2010	May 17, 2010				
Notice of Allowance	April 30, 2010	June 17, 2010				
Projected Issue Fee Paid:	July 30, 2010	July 30, 2010				
Projected Issue Date:	Tuesday, November 30, 2010	November 30, 2010				
Three year deadline:		March 30, 2007		1341		
First RCE Filed:	October 31, 2007			-1126		
Delay Totals:			271	215	-81	-181
Patent Term Adjustment (days):			224			